

Internal Revenue Service

Department of the Treasury

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UNITED STATES
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Washington, DC 20224

Date

Surname

Contact Person:

Telephone Number

In Reference to:

Date:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). We have concluded that you do not qualify for exemption from federal income tax under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated under the laws of the State of [redacted] on [redacted] for the purpose of providing and assisting in the provision of long term health care facilities especially designed to meet the physical, social and psychological needs of the elderly and the infirm. Your principal purpose will be to acquire or lease and operate long-term care facilities that were previously owned by governmental agencies.

You state that your activities will consist of assisting government agencies in privatizing [redacted]. You propose to either purchase or lease government owned [redacted] and [redacted] for the operation of the [redacted].

[redacted] we requested additional information from your organization to enable us to make a determination on your application for exempt status. You responded to our request in a letter dated [redacted]. However, you have not provided sufficient documentation to evidence the manner, circumstances and terms under which you will engage in your proposed activities.

You state that your Board of Directors will participate in the marketing and development of the relationships with various city, county and state officials involved in operating [redacted]. Their efforts would result in assisting the officials in [redacted]. However, you have provided no documentation as to how the marketing and development of such relationships will

[REDACTED]

be accomplished nor on the specific type of assistance to be provided to government officials.

The nature and terms of participation of the governmental agencies with your organization is not clear. You state that you will purchase or lease facilities from the government owner under negotiated terms which may allow some continued role for government in the oversight of the facility or its admission policies. However, there is no indication that in fact the governmental agencies will play any type of role or the extent, if any, of the governmental agencies' involvement with your organization. Further, there is no information on the state laws applicable to such transactions with government agencies, such as laws governing the establishment of these governmental [REDACTED] and the laws governing their operation, sale, lease, and closing.

You state that you have not entered into any type of contracts to purchase land, buildings, equipment, and/or operating leases because you have not started operations. You state that you have not acquired any facilities operated by governmental agencies and are not presently considering any specific facilities. You also state that you have no informational literature because you have not begun operations.

You state that you will be managed by a for-profit management [REDACTED]

[REDACTED] You also state that you will also contract with [REDACTED]

[REDACTED], project management and development services with respect to facilities which become part of the Foundation. However, you have not entered into any management or operations contract.

Revenue Procedure 90-27, 1990-1 C.B. 514, 515, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere statement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of

actual operations may be required before a ruling or determination letter will be issued.

Section 501(c)(3) of the Code provides exemption from federal income tax for organizations organized and operated exclusively for the purposes specified therein no part of the net earnings of which inures to any private individual or shareholder. The purposes specified in section 501(c)(3) of the Code include charitable purposes. Charitable purposes include relieving the burdens of government. See section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirement of this section of the regulations, it is necessary for an organization to establish that it is not operated for the benefit of private individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

An organization is not exempt under section 501(c)(3) merely because it provides services to nonprofit entities because such activities are indistinguishable from similar activities of an ordinary commercial enterprise. See B.S.W. Group, Inc. v. C.I.R., 70 T.C. 352 (1978).

It is the burden of the organization applying for exemption to produce the evidence that establishes that its activities will satisfy the requirements of the Code and regulations. See Rev. Proc. 90-27, supra. The information you have submitted does not demonstrate that your proposed activities will conform to the requirements of section 501(c)(3) of the Code and the corresponding sections of the regulations. Therefore, you have failed to produce the evidence necessary to establish your entitlement to exemption under section 501(c)(3).

You have also failed to produce concrete information sufficient to support a conclusion that you will not be operated for the benefit of private interests as required by section

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1.501(c)(3)-1(d)(1)(ii) of the regulations. We, therefore, conclude that you will operate to benefit the private interests of [REDACTED], for-profit entities that have been selected to perform services for you for a fee without the benefit of competitive bids or other objective procedures.

We further find that, like the organization described in the B.S.W. case, supra, you have failed to provide any information which would distinguish your proposed activities from similar activities of an ordinary commercial enterprise. We, therefore, conclude that you are operated for the substantial nonexempt purpose of conducting an ordinary commercial activity. This is so even though the commercial activity may be directed to servicing the needs of governmental or other nonprofit entities.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State

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[REDACTED]

Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: CP:E:EO:T:1 Room 6514
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

CC: [REDACTED]

[REDACTED]